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**IN THE
COURT OF APPEALS OF INDIANA**

RICHARD SAMUELS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0609-CR-742
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William Robinette, Commissioner
Cause No. 49G03-0601-FB-6677

August 14, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Richard Samuels appeals his conviction for burglary, as a class B felony, and theft, as a class D felony.

We affirm.

ISSUES

1. Whether the State presented sufficient evidence to convict Samuels of burglary.
2. Whether the trial court erred in admitting evidence.

FACTS

At approximately 10:00 a.m. on January 13, 2006, Scott Liose entered his garage, located at the back of his Indianapolis residence. Through the garage's windows, Liose had an unobstructed view into the backyard of his neighbor, Melissa Combs. Liose noticed headlights shining through the windows and heard an engine revving. Liose saw a sports-utility vehicle in Combs' backyard, near a utility shed. Liose noticed that the shed's doors were open and that the SUV appeared to be stuck in mud. Thinking it odd that the SUV was in Combs' yard, Liose asked his wife, Colette Liose, to contact Combs at work while he remained in the garage. At Combs' behest, Colette contacted 911 to report the vehicle.

Liose continued to watch the SUV for approximately thirty minutes. At some point, Samuels exited the SUV. Samuels "was constantly going to the back of the truck and . . . trying to get something under the wheels of the truck." (Tr. 69). Among the

items that Samuels attempted to place under the wheels were some pots from the shed and a board.

Approximately thirty minutes after Colette telephoned 911, Marion County Sheriff's Deputy William Vasquez and his trainee, Deputy Christopher Sherrell, arrived at Combs' residence and parked in the front of the residence. As Deputy Vasquez walked along the side of Combs' house, toward the backyard, he observed Samuels, carrying a shovel and walking toward him. Deputy Vasquez ordered Samuels to put down the shovel and "asked him what was going on." (Tr. 89). Samuels answered that he was there to get some firewood from the yard of Combs' neighbor and had gotten stuck in the mud.

Deputy Vasquez then walked to the back of Combs' residence and observed an SUV, stuck in the mud, as well as tire tracks. From the tire tracks, it appeared that the SUV had been driven through the yard. The driver's door and the tailgate were open. A lawn mower was in the back of the SUV. Deputy Vasquez noticed a blanket and several pieces of lumber lying on the ground, near the SUV. Samuels "said he was using a lot of different things to try to get his truck from the yard and become unstuck." (Tr. 133). Deputy Vasquez did not see any firewood near the SUV.

Around this time, Deputy James Merritt arrived at the scene to assist. Deputy Merritt asked Samuels why he was in Combs' yard. Samuels "said he drove back [t]here to get firewood, and pointed to the neighbor's yard." (Tr. 133).

Deputy Vasquez asked Samuels why he had a lawn mower in the SUV. Samuels "stated that a friend had given it to him and that he was doing yard work and various

lawn mowing jobs.” (Tr. 96). Deputy Vasquez found Samuels’ explanation “very unusual, since it was raining very heavily,” and “[t]he temperature was probably around 40, 50 degrees.” (Tr. 96). Deputy Vasquez also asked Samuels whether “he had permission to get this firewood that he was supposed to be picking up,” and Samuels replied that he did not have permission. (Tr. 102). Later, after Samuels had been placed under arrest, he informed Deputy Sherrell that he had “placed the push mower in the back of the vehicle to add weight to it, to try to get himself unstuck from the mud” (Tr. 140).

As Deputy Vasquez was speaking with Samuels, he observed that the service door to Combs' garage, which was attached to Combs' residence, was ajar. Upon investigation, Deputy Vasquez found fresh mud on the doorjamb and just inside the garage. Samuels “[h]ad mud all over his legs, [and] his hands.” (Tr. 101).

When Combs arrived at home, she informed Deputy Vasquez that the lawn mower in the back of the SUV belonged to her. Samuels was placed under arrest.

On January 17, 2006, the State charged Samuels with Count I, burglary, as a class B felony, and Count II, theft, as a class D felony. The State subsequently filed an information against Samuels, alleging him to be an habitual offender.

On July 18, 2006, Samuels filed a motion to suppress, arguing that his statements to Deputies Vasquez and Merritt should be suppressed because he was questioned “prior to any *Miranda* advisement in a manner that was designed to elicit an incriminating response.” (App. 72). On July 20, 2006, the trial court held a hearing on the motion to suppress. During the hearing, Deputy Vasquez testified that Samuels informed him that

he did not have permission to take the firewood prior to Deputy Vasquez asking Samuels about the lawnmower. Deputy Merritt testified that he never heard Deputy Vasquez ask Samuels about the lawnmower but that Samuels “did say that he was there to do yard work.” (Tr. 30). The trial court denied Samuels’ motion.

Also on July 20, 2006, the trial court held a jury trial. During the trial, Combs testified that she had not given Samuels permission to be on her property, enter her attached garage or take the lawn mower. Combs also testified that she had not given Samuels permission to take the shovel, wood or blanket from the attached garage. Deputy Merritt testified that he heard Samuels state that he came into Combs' yard “to get firewood.” (Tr. 131). When asked why Samuels came into Combs' yard to get firewood, Samuels replied that he was “garden in the area.” (Tr. 131). Deputy Merritt further testified that Samuels later claimed that “he was in the area to do yard work . . . for one of the neighbors.” (Tr. 129)

The jury found Samuels guilty as charged, and Samuels admitted to being an habitual offender.

At the conclusion of the sentencing hearing held on August 4, 2006, the trial court sentenced Samuels as follows:

On Count I, which is a Class B Felony, there will be a 15-year sentence, when considering your prior felony record that has been pointed out by the prosecutor and pointed out in the PSI, that you admitted was factual

* * *

And of the . . . 15 years, 10 years will be executed on that count. Five years will be suspended. You will be on probation, when you get out, on that count for two years.

* * *

Count II is a Class D Felony. There will be a three-year executed sentence, to be concurrent with Count I. You've already been fined.

And Count III, there will be a 10-year enhancement, for a total of 20 years executed in DOC.

(Tr. 244-45). According to the chronological case summary and abstract of judgment, the trial court imposed a sentence of twenty-five years, with five years suspended, on Count I and three years on Count II, to run concurrently with the sentence for Count I.

DECISION

1. Sufficiency of the Evidence

Samuels contends that the evidence presented by the State was insufficient to support his conviction for burglary. Specifically, Samuels asserts that the State failed to prove beyond a reasonable doubt that he broke into Combs' attached garage with the intent to deprive Combs of the value or use of her shovel or blanket.¹

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

¹ The charging information alleges that Samuels broke into the garage "with intent to commit the felony of Theft" and that Samuels "did knowingly exert unauthorized control over the property, that is: a lawnmower and/or a shovel and/or a blanket" (App. 21).

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted).

Indiana Code section 35-43-2-1 provides that “[a] person who breaks and enters the building or structure of another person, with intent to commit a felony in it, commits burglary, a Class C felony.” (Emphasis added). If, however, the building or structure is a dwelling, then the person commits burglary, as a class B felony. *See* Ind. Code § 35-43-2-1(1)(B). Indiana Code section 35-43-4-2 provides that “[a] person who knowingly or intentionally exerts unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use, commits theft”

“[I]n order to sustain a burglary charge, the State must prove a specific fact that provides a solid basis to support a reasonable inference that the defendant had the specific intent to commit a felony.” *Freshwater v. State*, 853 N.E.2d 941, 944 (Ind. 2006). Thus, while intent to commit a given felony may be inferred from the circumstances, ““some fact in evidence must point to an intent to commit a specific felony.”” *Id.* at 943 (quoting *Justice v. State*, 530 N.E.2d 295, 297 (Ind. 1988)).

In this case, Combs testified that she stored the lawn mower in the shed. Combs also testified that she kept blankets inside her attached garage, “[r]ight next to the door that goes inside the house,” and kept the lumber “[i]n the garage.” (Tr. 154, 155). Combs further testified that she stored the shovel inside a closet located in the garage. Deputy Vasquez testified that when he arrived at Combs' residence, he discovered Samuels, carrying the shovel. Deputy Vasquez further testified that the lawn mower was in the back of Samuels' SUV, and a blanket was lying on the ground, near Samuels' SUV. Combs later identified the lawn mower, blanket, shovel and lumber as personal

property belonging to her. Furthermore, Liose testified that he observed Samuels attempting to free his SUV from the mud. Given these facts—Combs' shovel, lumber and lawn mower in Samuels' possession and Combs' blanket lying near Samuels' SUV, along with Samuels' attempt to drive away in his SUV²—we find the State presented sufficient evidence to convict Samuels of burglary.

2. Admission of Evidence

Samuels asserts that the trial court improperly admitted Samuels' statements to the police regarding obtaining the lawnmower from a friend because the statements were made without *Miranda* warnings. Specifically, Samuels argues that he was in custody when he made his statements because his statements were in response to questions designed to elicit incriminating responses once the police knew that Samuels did not have permission to take the firewood.

The admission or exclusion of evidence is a matter left to the sound discretion of the trial court. *Terry v. State*, 857 N.E.2d 396, 409 (Ind. Ct. App. 2006), *trans. denied*. On review, we will not reweigh the evidence. *Id.* “Instead, we will consider all conflicting evidence in favor of the trial court’s ruling, and only the uncontested evidence favorable to the defendant.” *Id.*

Miranda warnings are based upon the Fifth Amendment’s privilege against self-incrimination, and were designed to protect an individual from being compelled to testify against himself. *Gibson v. State*, 733 N.E.2d 945, 952 (Ind. Ct. App. 2000). Police

² The jury could reasonably infer that Samuels had already entered Combs' attached garage and taken the lumber for his own use as Liose testified that he observed Samuels “going to the back of the truck” and placing a board under the tires. (Tr. 69).

officers are not required to give a defendant a *Miranda* warning unless the defendant is in custody and subject to interrogation. *Id.*

Nonetheless, statements obtained in violation of *Miranda* and erroneously admitted are subject to harmless error analysis. The improper admission of evidence is harmless error when the conviction is supported by substantial independent evidence of guilt which satisfies the reviewing court that there is no substantial likelihood the challenged evidence contributed to the conviction. A federal constitutional error is reviewed de novo and must be “harmless beyond a reasonable doubt.” The court must find that the error did not contribute to the verdict, that is, that the error was unimportant in relation to everything else the jury considered on the issue in question.

Morales v. State, 749 N.E.2d 1260, 1267 (Ind. Ct. App. 2001) (internal citations omitted).

Here, we do not decide whether the trial court improperly admitted Samuels’ statements because we conclude that any error in the admission of the evidence was harmless. Samuels’ statements were merely cumulative of other evidence, namely that Samuels was in Combs’ yard without her permission or knowledge and had taken Combs’ property, without her permission, from her shed and attached garage.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.